

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 24 2023

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAMES ALLEN FLOYD,

No. 21-35657

Plaintiff-Appellant,

D.C. No. 1:20-cv-00347-BLW

v.

MEMORANDUM*

ADA COUNTY; STEPHAN BARTLETT,
Ada County Sheriff; SAMUEL BARNES;
BARBRA LUTZ; AMANDA; JOHN OR
JANE DOE, The defendants are sued in their
individual and official capacity; DENNIS
JENSEN,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Idaho

B. Lynn Winmill, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

Idaho state prisoner James Allen Floyd appeals pro se from the district
court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915A); *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court properly dismissed Floyd’s claim arising from the opening of his legal mail outside of his presence because Floyd failed to allege facts sufficient to show that defendants’ opening of any protected legal mail was arbitrary or capricious. *See Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1211-12 (9th Cir. 2017) (discussing requirements to allege a plausible claim of improper opening of protected legal mail).

The district court properly dismissed Floyd’s retaliation claim because Floyd failed to allege facts sufficient to show that defendants took an adverse action against him because of his protected conduct. *See Brodheim v. Cry*, 584 F.3d 1262, 1269 (9th Cir. 2009) (setting forth the elements of a retaliation claim in the prison context).

Dismissal of Floyd’s access-to-courts and municipal and supervisory liability claims was proper because Floyd failed to allege facts sufficient to state a plausible claim. *See Lewis v. Casey*, 518 U.S. 343, 354-55 (1996) (discussing

requirements for an access-to-courts claim); *Jackson v. City of Bremerton*, 268 F.3d 646, 653 (9th Cir. 2001) (“Neither a municipality nor a supervisor . . . can be held liable under § 1983 where no injury or constitutional violation has occurred.”).

AFFIRMED.